

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

RUSSELL SHILLINGTON,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

) Case No. DISM-98-0041

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the Region 3 Community Services Office in Everett, Washington, on February 11, 2000. LEANA D. LAMB, Member did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Russell Shillington was present and was represented by Anita L. Hunter, Attorney at Law, of Parr & Younglove, P.L.L.C. Respondent Department of Social and Health Services was represented by Helen Arntson, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, insubordination and gross misconduct. Respondent alleges that Appellant behaved inappropriately in the workplace and made unprofessional, vulgar and insensitive comments to coworkers.

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2 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084  
3 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v.  
4 Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf,  
5 PAB No. D89-004 (1989); Aquino v. University of Washington, PAB No. D93-163 (1995);  
6 Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

## 7 8 **II. FINDINGS OF FACT**

9 2.1 Appellant Russell Shillington was a Financial Services Specialist 3 and permanent employee  
10 for Respondent Department of Social and Health Services (DSHS). Appellant and Respondent are  
11 subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358  
12 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 26, 1998.

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14 2.2 Appellant began his employment with the department in 1983. Appellant worked at the  
15 Bellingham Community Services Office and his duties as a Financial Services Specialist 3 consisted  
16 of making determinations of eligibility for financial assistance, food stamps and medical coupons.

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18 2.3 Appellant's performance evaluations for the years of 1997, 1996, 1995, and 1993 indicate  
19 that he primarily met the normal requirements of his position. Prior evaluations dated 1988 through  
20 1990 indicate that Appellant primarily met the normal requirements of his position in all  
21 performance dimensions except under "personal relations" where Appellant met minimum or failed  
22 to meet minimum requirements as a result of inappropriate behavior and interactions with a  
23 coworker.

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25 2.4 Appellant had received prior discipline and counseling, including the following:  
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- A two month suspension effective August 7, 1991, for neglect of duty, insubordination and gross misconduct for calling a coworker a “drug-dealing psychopath.” The letter also reminded Appellant of his duty to treat coworkers with dignity, respect and courtesy.
- A memorandum dated October 5, 1990, directing Appellant to communicate with other employees in a courteous and respectful manner and warning Appellant that his failure to comply could result in further disciplinary action.
- A one month reduction in salary effective February 1, 1990 for neglect of duty and willful violation of agency rules and regulations for charging a long distance phone call from a motel in California to the Bellingham Community Services Office.

2.5 In addition, Appellant received a two-month reduction in salary effective April 16, 1989, for neglect of duty and gross misconduct as a result of Appellant’s misconduct when he entered the work station of a female coworker on November 7, 1988 and initiated an inappropriate exchange during which Appellant was aggressive, unprofessional and disruptive to the workplace. The letter directed Appellant to avoid further conduct of a similar nature and warned him that any further incidents could result in more severe disciplinary action up to and including dismissal. The coworker and Appellant had been involved in a personal relationship which had ended in November 1988. Appellant received a memorandum of expectations dated December 15, 1989, advising Appellant and the coworker to avoid all personal interaction with each other at the work site.

2.6 Effective September 22, 1991, Appellant was transferred to the Mt. Vernon Community Services Office (CSO).

1 2.7 Appellant and Rena Guadagnoli, Social Worker 2, met at the Mt. Vernon CSO in July 1995.  
2 In September 1995, they began to date and became involved in a romantic relationship. In early  
3 December 1997, Ms. Guadagnoli ended the relationship.

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5 2.8 Appellant's and Ms. Guadagnoli's job duties required that they work together. Sometime in  
6 December 1997, Ms. Guadagnoli, an incapacity specialist, and James Grant, Social Worker 2, who  
7 ran a childcare program, switched job duties. Ms. Guadagnoli and Mr. Grant began to work  
8 together to learn each other's respective duties. The change in job duties did not require Ms.  
9 Guadagnoli to work directly with Appellant.

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11 2.9 By letter dated August 12, 1998, Daniel M. Peyton, Regional Administrator for the  
12 Community Services Division, informed Appellant of his dismissal effective August 28, 1998. Mr.  
13 Peyton charged Appellant with four incidents of misconduct which are addressed separately below.

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15 2.10 *Charge #1. Incident of December 16, 1997*

16 On December 16, 1997, between 11:59 a.m. and 1:00 p.m., you approached the  
17 cubicle of Jim Grant, Social Worker 2, asking him to meet with you after work.  
18 When Mr. Grant declined, you further insisted and ultimately became angry and  
called him a "fuckhead." . . .

19 During the administrative review held on March 2, 1998 you concurred that you  
20 did in fact call Jim Grant a "fuckhead."

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22 2.11 On the morning of December 16, 1997, Appellant approached Mr. Grant and asked to  
23 meet with him. Appellant testified that he believed Mr. Grant was angry with him and he wanted  
24 to address the issue. Mr. Grant initially agreed to meet with Appellant, however, he changed his  
25 mind based on previous discussions with Ms. Guadagnoli, who had given him some background  
26 on her relationship and break-up with Appellant. Mr. Grant also believed that Appellant was

1 feeling jealous. Later that day, Mr. Grant stated to Appellant that he did not wish to meet with  
2 him if it was to discuss Appellant's relationship with Ms. Guadagnoli.

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4 2.12 Appellant testified that Mr. Grant became hostile and told him in a raised voice that he did  
5 not want to meet with him if it was personal. Appellant testified that he told Mr. Grant, "You  
6 know we broke up" and "I don't care what you do with Rena." Appellant says he then turned to  
7 leave and said "fuck head" under his breath and to himself. Appellant speculated that Ms.  
8 Guadagnoli convinced Mr. Grant not to talk to him.

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11 2.13 Mr. Grant testified that when he told Appellant he would not meet with him if it was to  
12 discuss Ms. Guadagnoli, Appellant's behavior changed and he became emotionally charged. Mr.  
13 Grant told Appellant that he did not want to get involved and that Ms. Guadagnoli was his  
14 coworker and friend and nothing else. Mr. Grant testified that Appellant stated, "You must be  
15 doing something. What are you trying to hide?" and "If you weren't doing anything wrong,  
16 you'd want to talk." Appellant appeared to be angry with Mr. Grant. Mr. Grant testified that  
17 Appellant called him a "fuck head" and then stormed off.

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20 2.14 Based on Appellant's testimony and admission that he uttered the word "fuck head," we  
21 find that it is more likely than not that the events occurred as described by Mr. Grant and that  
22 Appellant became upset and frustrated at Mr. Grant's unwillingness to meet with him and  
23 directed the comment "fuck head" at Mr. Grant.

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25 2.15 *Charge #2. Incident of January 2, 1998.*  
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1 On January 2, 1998, between 7:30 am to 8:00 am, Rena Guadagnoli, a Mount  
2 Vernon DSHS Social Worker 2 walked past your work area three times. As she  
3 passed your work area the first two times, you made a loud snorting pig-like  
4 sound in her direction. On the third time she passed, you again made a loud  
5 snorting pig-like sound and said "fuck." . . .

6 2.16 Appellant flatly denies that this incident occurred, and he testified that he was not working  
7 at his cubicle on January 2. Ms. Guadagnoli testified that on the morning of January 2, she passed  
8 by Appellant in the hallway on three separate occasions. The first two times she passed by him, he  
9 turned and looked at her and made a grunting sound and shivering movement. She testified that  
10 when she passed by him a third time, Appellant turned, looked at her and said the word "fuck."  
11 Ms. Guadagnoli testified that she found Appellant's behavior scary and threatening.

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13 2.17 We find Ms. Guadagnoli's testimony of Appellant's odd and unusual behavior to be  
14 credible based on Appellant's history of making inappropriate remarks to other coworkers,  
15 including coworkers with which he previously had romantic relationships. Further, we find no  
16 reason why Ms. Guadagnoli would fabricate her story and find that a preponderance of the  
17 credible evidence establishes that Appellant exhibited odd behavior and used the word "fuck" as  
18 Ms. Guadagnoli walked by him. Appellant's behavior caused Ms. Guadagnoli to feel scared.

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21 2.18 *Charge #3. Incident of January 5, 1998.*

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23 On January 5, 1998, between 10:30 am and 11:00 am, you entered Rena  
24 Guadagnoli's work area . . . and told her you did not want her at the printer when  
25 you were there and that she was to stay away from you because she was a  
26 "disgusting, gross, poor excuse for a human being" and that she made you sick.  
Ms. Guadagnoli states she repeatedly ask you, during this incident, to leave her  
work area and to leave her alone which you failed to do. . . .

1 2.19 On January 5, Appellant was retrieving documents from a printer in a common work area  
2 when Ms. Guadagnoli arrived at the same printer to retrieve some of her own documents. Ms.  
3 Guadagnoli took her paperwork and returned to her cubicle. A short time later, Appellant entered  
4 Ms. Guadagnoli's work area.  
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7 2.20 Appellant testified that he felt like Ms. Guadagnoli had imposed on his personal space when  
8 she approached the printer while he was standing there and he felt the need to address this with her.  
9 Appellant testified that he entered Ms. Guadagnoli's cubicle and told her in a loud whisper to wait  
10 until he was done at the printer before she approached the printer. Appellant testified that Ms.  
11 Guadagnoli responded to him in a loud voice, "No! No! No! I'll do whatever I want, whenever I  
12 want. Just leave me alone!" Appellant stated that he "got out of there very quickly." Appellant  
13 denies that he made the statement "disgusting, gross, poor excuse for a human being" and testified  
14 that it was a term Ms. Guadagnoli used to describe herself in a prior letter she had written to him.  
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17 2.21 Ms. Guadagnoli testified that Appellant entered her cubicle, stated that he wanted to talk to  
18 her and then proceeded to shake his finger at her and say that he wanted her nowhere near him. Ms.  
19 Guadagnoli testified that Appellant then stated in a raised voice that she was a "sick, disgusting  
20 poor excuse for a human being" and "you make me sick."  
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22 2.22 Based on Appellant's history of prior inappropriate behavior, we find no reason why Ms.  
23 Guadagnoli would fabricate her story and find her version of the events credible.  
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26 2.23 *Charge #4. Incident of January 8, 1998.*

1 On January 8, 1998, either late morning or early afternoon, you went to Mr.  
2 Grant's work area and berated him for keeping a client waiting in the lobby.  
3 Your comments included: "That's not right to keep somebody waiting," "What's  
4 wrong with you?" "You shouldn't do that," and "What kind of social worker are  
5 you?" Mr. Grant indicated that your tone of voice, choice of words, and facial  
6 grimacing were inappropriate. . . .

7 2.24 Appellant testified that he put a referral in Mr. Grant's inbox and that approximately 90  
8 minutes later, the client was still waiting to meet with Mr. Grant. Appellant testified that when it  
9 was brought to his attention, he approached Mr. Grant, pointed out the referral and time lapse and  
10 explained that the client had a long ride home. Appellant denies that he berated Mr. Grant.

11 2.25 Mr. Grant testified that Appellant entered his work area and stated, "if you're such a great  
12 social worker, why is that person still waiting?" Mr. Grant testified that Appellant appeared angry  
13 and continued to berate him. Mr. Grant found Appellant's behavior disturbing and unsettling and  
14 felt uncomfortable with Appellant.

15 2.26 Again, based on Appellant's prior inappropriate behavior with coworkers, we find Mr.  
16 Grant's version of the events credible and find no compelling reason why Mr. Grant would  
17 fabricate his story.

18 2.27 Regional Administrator Daniel Peyton was Appellant's appointing authority. Prior to taking  
19 disciplinary action against Appellant, Mr. Peyton reviewed Appellant's history with the department,  
20 including his work performance, corrective counseling and formal disciplinary history. From his  
21 review, Mr. Peyton concluded that Appellant had a pattern of developing romantic relationships  
22 with coworkers which resulted in problems in the workplace once the relationships ended. Mr.  
23 Peyton weighed his obligation to ensure a safe and secure work environment for all employees and  
24 concluded that Appellant's behavior adversely impacted other coworkers. Because Appellant had  
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1 been previously counseled and disciplined for his inappropriate behavior in the workplace and  
2 because Appellant's actions created a climate of fear for Ms. Guadagnoli and Mr. Grant, Mr. Peyton  
3 concluded that dismissal was the appropriate sanction.

### 4 5 **III. ARGUMENTS OF THE PARTIES**

6 3.1 Respondent argues that it presented credible testimony and evidence to prove that Appellant  
7 used inappropriate and unprofessional language and made demeaning and offensive remarks to Ms.  
8 Guadagnoli and Mr. Grant which resulted in a negative, disruptive and adverse working  
9 environment. Respondent asserts that Appellant's denials of the events are not credible based on his  
10 prior history of unprofessional conduct and harassment of coworkers. Respondent contends that  
11 Appellant had received prior directives to conduct himself in a professional manner and to treat  
12 coworkers with respect and courtesy, yet he failed to comply with these directives. Respondent  
13 argues that although Appellant had a history of positive job performance, his dismissal was based  
14 on conduct which could no longer be tolerated in the work place. Respondent argues that it has a  
15 duty to maintain a safe work environment for its employees and that Appellant's behavior adversely  
16 affected its ability to do so. Respondent contends that dismissal was appropriate given the totality  
17 of the circumstances.

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19 3.2 Appellant argues that he, Mr. Grant and Ms. Guadagnoli had been coworkers and friends for  
20 a number of years. Appellant argues that he had a tumultuous relationship with Ms. Guadagnoli  
21 and that their subsequent break-up was not amicable. Appellant contends that Mr. Grant and Ms.  
22 Guadagnoli remained friends and he noted a change in Mr. Grant's behavior toward him. Appellant  
23 argues that Ms. Guadagnoli fabricated the stories against him and that his version of the incidents is  
24 accurate and truthful. Appellant asserts that he had a stellar performance record and that dismissal  
25 was not warranted.

#### IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

4.6 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

1 4.7 In determining whether a sanction imposed is appropriate, consideration must be given to  
2 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
3 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
4 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
5 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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7 4.8 Respondent provided sufficient and credible evidence to establish that Appellant engaged in  
8 inappropriate and unwelcome conduct and subjected his coworkers to inappropriate displays of  
9 anger that included the use of profanity. Appellant had a duty to be respectful toward his coworkers  
10 and to conduct himself in a professional manner. Appellant had received numerous directives and  
11 disciplinary actions addressing his inappropriate behavior and directing him to modify his behavior  
12 in the workplace. Respondent has shown by a preponderance of the credible evidence that  
13 Appellant's actions constituted neglect of duty and insubordination. Furthermore, Respondent has  
14 proven by a preponderance of the evidence that Appellant's inappropriate behavior and outbursts of  
15 anger interfered with the department's ability to provide a safe and secure environment for its  
16 employees and constituted gross misconduct.

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18 4.9 Appellant had received prior discipline, he had been warned that any repeated conduct of the  
19 same or similar nature would not be tolerated, and he was aware of his duty to treat coworkers with  
20 dignity and respect. The history and repeated pattern of Appellant's behavior makes the facts of  
21 this case egregious and warrants the most severe punishment that can be imposed on an employee.

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23 4.10 Under the facts and circumstances of this case, including the seriousness of the offenses and  
24 the repeated pattern of Appellant's misconduct, we conclude that Respondent has proven that the  
25 sanction of dismissal is appropriate and the appeal should be denied.

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**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Russell Shillington is denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

\_\_\_\_\_  
Walter T. Hubbard, Chair

\_\_\_\_\_  
Gerald L. Morgen, Vice Chair